

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
Fair Lawn Board of Education ) NEC.471.11-19-99.01100003  
Fair Lawn, New Jersey ) NEC.471.12-10-99.02300008  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )  
Changes to the Board of Directors of the ) CC Docket No. 97-21✓  
National Exchange Carrier Association, Inc. )

**ORDER**

**Adopted: June 26, 2001**

**Released: June 27, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Waiver filed by Fair Lawn Board of Education (Fair Lawn), Fair Lawn, New Jersey.<sup>1</sup> Fair Lawn seeks a waiver to allow consideration of its application as timely filed within the filing window established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) for Funding Year 3 of the schools and libraries support mechanism. For the reasons that follow, we deny Fair Lawn's Request for Waiver.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>2</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>3</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements

<sup>1</sup> Letter from Bruce Watson, Fair Lawn Board of Education, to Federal Communications Commission, filed June 22, 2000 (Request for Waiver); *see also* Letter from Bruce Watson, Fair Lawn Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, dated February 22, 2000 (SLD Appeal).

<sup>2</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>3</sup> 47 C.F.R. § 54.504 (b)(1), (b)(3).

for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.<sup>4</sup> A commitment of support is contingent upon the filing of the applicant's FCC Form 471.<sup>5</sup>

3. Fair Lawn applied for discount telecommunication services for Funding Year 3 on November 19, 1999.<sup>6</sup> On December 10, 1999, Fair Lawn submitted another FCC Form 471 for discount internal connections.<sup>7</sup> Instead of using the appropriate Year 3 FCC Form 471 applications,<sup>8</sup> Fair Lawn applied for support using Year 2 FCC Form 471 applications.<sup>9</sup> On February 16, 2000, SLD sent Fair Lawn a letter stating that it declined to accept Fair Lawn's Year 2 FCC Forms 471 because Fair Lawn's Year 2 applications failed to meet minimum processing standards for Year 3.<sup>10</sup> SLD informed Fair Lawn that, because it used the Year 2 FCC Form 471 rather than the Year 3 Form, its application could not be processed.<sup>11</sup>

4. On February 23, 2000, Fair Lawn filed an appeal with SLD, stating that, although it used a Year 2 application for Funding Year 3 in error, its Year 2 Forms 471 were nonetheless filed before the filing window closed on January 19, 2000.<sup>12</sup> With its appeal, Fair Lawn also submitted a Year 3 FCC Form 471 and requested that it be considered as filed within the Year 3 window.<sup>13</sup> SLD issued an Administrator's Decision on Waiver Request on June 8, 2000, stating that it could not consider Fair Lawn's request.<sup>14</sup> Fair Lawn filed the instant Request for Review, again requesting that its Year 3 FCC Form 471 be considered as being timely filed.<sup>15</sup>

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<sup>4</sup> 47 C.F.R. § 54.504(c).

<sup>5</sup> *Id.*

<sup>6</sup> Funding Year 2 FCC Form 471, Fair Lawn Board of Education, filed November 19, 1999 (November Form 471).

<sup>7</sup> Funding Year 2 FCC Form 471, Fair Lawn Board of Education, filed December 10, 1999 (December Form 471).

<sup>8</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471).

<sup>9</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (Year 2 Form 471).

<sup>10</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Fair Lawn Public Schools, dated February 16, 2000. SLD also found that Fair Lawn's December application for internal connections was denied on the basis that it did not have an original signature certification.

<sup>11</sup> *Id.*

<sup>12</sup> Letter from Bruce Watson, Fair Lawn Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, dated February 22, 2000 (SLD Appeal).

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Fair Lawn Public Schools, dated June 8, 2000.

<sup>15</sup> Request for Waiver *supra* note 1, at 1.

5. Under our rules, SLD is authorized to establish and implement filing periods for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.<sup>16</sup> Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.<sup>17</sup> A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>18</sup> A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>19</sup> The Year 3 FCC Form 471 required additional information than the Year 2 FCC Form 471. It would be administratively burdensome if SLD were to accept the Year 2 FCC Form 471 only to return to the applicant to collect missing information that was required in the Year 3 Form 471. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application. In this case, Fair Lawn asserts that despite using the wrong forms, its application should be accepted as completed within the filing window.<sup>20</sup> Fair Lawn contends that its forms were filed well within the filing window and it was not notified of the problem until after the filing deadline.<sup>21</sup> Fair Lawn asserts that it could have refiled timely using the correct FCC Form 471 if SLD had notified it prior to the filing deadline.<sup>22</sup>

6. We conclude that Fair Lawn has provided an insufficient basis for a waiver from the general rule. SLD must review and process thousands of applications each funding year. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.<sup>23</sup> It is incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. Because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used. Fair Lawn should have determined that it was using the wrong application. The FCC Form 471 application and instructions are funding year specific,<sup>24</sup> and each set of instructions provides item-by-item instructions to the corresponding form. Further,

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<sup>16</sup> 47 C.F.R. § 54.507(c).

<sup>17</sup> 47 C.F.R. § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>18</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also* *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

<sup>20</sup> Request for Waiver *supra* note 1, at 1; SLD Appeal *supra* note 1, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *See generally* Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

<sup>24</sup> *Cf.* Year 2 FCC Form 471 with Year 3 FCC Form 471.

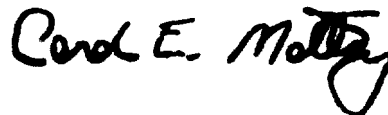
the instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.<sup>25</sup> Specifically, the website instructions for completing FCC Form 471 for Year 3 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of September 1999 in the lower right-hand corner."<sup>26</sup>

7. We are not persuaded by Fair Lawn's assertion that the filing deadline should be waived because SLD did not return Fair Lawn's application within the filing window. The FCC Form 471 instructions state that if a school or library does not provide the information requested on this form, "the processing of your application may be delayed or your application may be returned to you without action."<sup>27</sup> Applicants that fail to properly complete the required application or otherwise fail to follow program rules, run the risk that their applications may not be considered within the filing window.

8. SLD received a number of applications that used the wrong form for Funding Year 3. If we were to grant a waiver for using the wrong FCC Form 471, we would then have to grant similar relief to other entities that made similar mistakes, which would in turn increase administrative burdens for SLD. For Funding Year 3, SLD received over 36,000 applications. It is impractical, if not impossible, for SLD to review each application and notify applicants of errors prior to the close of the filing window. Instead, the burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves. We therefore conclude that, under these circumstances, Fair Lawn has failed to make a showing warranting relief and, therefore, its Request for Waiver must be denied.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed June 22, 2000 by Fair Lawn Board of Education, Fair Lawn, New Jersey IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey, Deputy Chief  
Common Carrier Bureau

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<sup>25</sup> *Id.*

<sup>26</sup> Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

<sup>27</sup> *Id.*